

What the star witness saw

7/7/2007

By Bret Christian

Without a 19-year-old Woodlands psychology student, Clare Pigliardo, there would have been no Phillip Walsham murder trial.

"You would not be here but for the evidence of Clare Pigliardo," the prosecutor told the jury in the first trial in 2005.

Ms Pigliardo, now aged 29, was the star witness at the inquest and the two trials that eventually resulted in three life sentences for murder.

She gave evidence in court in a confident and forthright way, saying she was certain of the central aspects of her evidence.



Clare Pigliardo

These were that she had seen people on the Stirling Station footbridge, and one of them made an "athletic backflip" from the bridge.

She did not see any struggle between the people, and was sure that after the body hit the road, it bounced at least a metre back into the air.

On another occasion she said it bounced as high as a car.

So high, in fact, that she could see the roadway underneath it.

She was also sure that the activity on the bridge had taken place next to a light pole situated on the left side of the overpass.

Twice in court she drew on a photograph of the scene with a Texta pen to show exactly where she says the fall occurred.

But aerial photos show that had a body fallen directly below from this point, it would have fallen on to the sandy verge.

Mr Walsham was found on the road, his head towards the kerb and his feet pointing to the road centre, five metres out from the point Ms Pigliardo swore he fell.

At this month's appeal hearing, at least one of the appeal judges appeared greatly impressed with the directness of Ms Pigliardo's evidence.

Justice Geoffrey Miller said to lawyer Malcolm McCusker QC: "It's a very big leap to say you could conclude that at all times he was down on the roadway and he got hit by a vehicle and he was never up on the footbridge.

"The evidence of Ms Pigliardo is dead against you and there's nothing to suggest that it should be discarded."

Justice Miller said that at the 2006 trial, the defence did not ask whether the fall from the bridge was a figment of Ms Pigliardo's imagination, and it was not put to her that "she never saw any such thing at all".

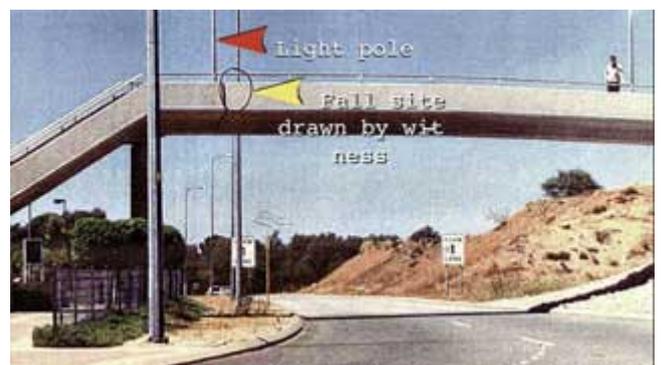
Justice Miller said that defence counsel Simon Watters had put to her, "Are you sure you didn't see him hit by a motor vehicle?" and she said, 'No, no, no. I saw him come off a bridge.'

Justice Miller said: "That was the only instance I could find where it was actually being suggested to her she didn't really see what she said she saw at all."

Mr Watters had asked Ms Pigliardo whether what she saw was a person bouncing into the air after being hit by a car involved in a hit-run.

Mr McCusker told the appeal court last month that the defence had sought the opinion of an expert on the reliability of eyewitness testimony, but the second trial judge did not allow the expert evidence to go before the jury.

He said the defence contended that Ms Pigliardo's evidence was "worthless".



The spot identified by the witness as where she saw a person 'backflip' off the southern side of the footbridge.

Justice Miller said at the appeal court hearing that the jury may have preferred Ms Pigliardo's evidence to that of bread delivery driver Joseph Lione, whose account of seeing a body on the road contradicted Ms Pigliardo's evidence by about 15 minutes.

His evidence and that of taxi driver Ian Donaldson was used by the defence to paint the scenario that Mr Walsham had been hit by a car while crossing the freeway on-ramp.

Defence lawyers said that the road crash scenario had not been considered by police until three days after Mr Walsham's death.

By that time all evidence on the road had been destroyed by passing traffic.

Mr Lione was definite that the person he saw on the road was north of the footbridge, yet ambulance paramedics found Mr Walsham almost four metres south of the footbridge.

Defence lawyers said it appeared Mr Walsham was hit and projected forward by a still-unidentified car.

At the second trial, the defence lawyers painted Ms Pigliardo as an unreliable witness who was honestly mistaken.

They emphasised that she was returning from her sister's 21st birthday party and had drunk up to eight glasses of punch containing vodka.

She was short-sighted. However, she gave evidence that she was wearing her contact lenses on the night.

She was in her mother's car 92 metres back from the bridge, stopped at a red light at Cedric Street.

Ms Pigliardo gave evidence that she saw a group of people walking briskly up the footbridge towards the station.

The prosecution's case was that these figures were the three convicted men and Mr Walsham.

The defence submitted that Mr Walsham was "legless drunk" with an alcohol reading of over 0.2% in his blood.

A train station video played in court showed him barely able to walk and being dragged on his back on to the train at Glendalough station by his friends.

Justice Christopher Steytler commented at last month's appeal: "She (Ms Pigliardo) sees four people walking up together briskly, which is a little surprising, given the state of Mr Walsham."



Scene of the tragedy – an aerial view of the Stirling Station footbridge over the southbound freeway on-ramp at Cedric Street.

Ms Pigliardo described seeing silhouettes, was not sure whether they were men or women, and did not identify them as the charged men.

In her earlier statement, just three days after the event, she said she saw one or two people on the bridge; then, after a police hypnotism session, described the people as a group.

The number in the group described by Ms Pigliardo has varied between two and five, but she was definite at the last trial that the number was four.

In summing up during the first trial, Justice Murray told the jury that "there seems to be a lot of inconsistency in relation to what she has said from time to time".

He told jurors they would be "hard-pressed to draw any firm conclusion from her evidence and the various descriptions that have been given as to how many people were there".

Asked at the second, 2006 trial by Mr McCusker why the numbers had varied, she replied: "I can't honestly put together a sensible assumption."

She told the court she had turned to her mother, who was driving, and remarked that it was strange there were still people about after the trains had stopped running.

When she turned back she saw one of the people backflip off the bridge, but had not seen any contact between them. She said they were at "talking distance".

Her mother and sister, whose attention had been drawn to the footbridge, said they saw nobody fall from it.

They both said they saw only a body on the road, in a different position to that described by Ms Pigliardo,

and nobody on the footbridge.

The prosecution told the jury that the accused men must have ducked behind the railing after throwing or pushing Mr Walsham off the bridge.

However, the prosecutor could not explain how the men had time to flee the scene unnoticed by the four vehicles that arrived after the alleged fall.

The trial was told that Ms Pigliardo's family members discussed what they should do next.

No one in the car had a phone, so they drove home to Woodlands and dialled 000.

Meanwhile, another taxi driver had come across the fatally injured Mr Walsham south of the footbridge and called an ambulance.

Lawyers for the three convicted men say there are insurmountable problems with Ms Pigliardo's evidence.

The first is that it would be impossible for anyone in Mr Walsham's intoxicated state to walk briskly up the stairs unaided.

The second is that the description by Ms Pigliardo of the interaction between the people was that she saw no fight or struggle, nor did she see anyone pushing or throwing Mr Walsham off the overpass.

She also explained that she could only see his upper torso and did not see his legs go over the bridge or his arms flailing in the air.

The third problem is the distance Mr Walsham was found from the point Ms Pigliardo was certain the bridge backflip took place.

The fourth was that there was no forensic evidence to show Mr Walsham had ever been on the bridge or outside the railing, despite the fact that he was bleeding.

Police seized the clothes of the three accused men, but extensive tests showed no trace of Mr Walsham's DNA.

Similarly, there was no trace of their DNA in material tested under his fingernails.

The fifth problem is the one-metre high body bounce.

Perth pathologist Dr Karin Margolius gave evidence that cuts to Mr Walsham's hands would have been received as his arms flailed when his body bounced after falling seven metres, as described by Ms Pigliardo.

But other pathologists disagree.

Human bodies simply do not bounce, they say. They behave exactly like a dropped sandbag.

Police, fire and rescue officers and scientists have viewed video footage of people hitting the ground after jumping from the World Trade Centre on September 11, 2001.

Despite the height, there was no sign of any bounce.

A leading American pathologist, Dr Dan Spitz, says: "If a witness describes in definite terms something he saw that is physically impossible, it is fair to question all his evidence."

None of this "body bounce" evidence was produced in the appeal court last month, because of a legal technicality.